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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 1186

GUSSIE JOFFE,

Petitioner,

v.

SIDNEY H. JOFFE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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March 1, 1968

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The petitioner, Gussie Joffe, petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit entered in this proceeding on October 27, 1967.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is reported at 384 F.2d 632 and is reprinted in the Appendix hereto, p. A-1, *infra*. The unreported order of the United States District Court for the District of New Jersey, is reprinted in the Appendix hereto, p. A-4, *infra*, together with an explanatory letter from the District Judge to counsel for the respondent.

JURISDICTION

The judgment of the Court of Appeals for the Third Circuit was entered on October 27, 1967, and a timely petition for rehearing was denied on November 28, 1967. On February 19, 1968, Mr. Justice Brennan signed an order extending the time for filing this petition for certiorari to and including March 1, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether a federal district court in New Jersey, in a diversity suit brought to enforce money judgments issued by a New York state court, should stay its proceedings until the New Jersey state courts have finally determined whether those judgments are entitled to recognition in those courts by virtue of the Full Faith and Credit Clause of the United States Constitution.

2. Whether a federal district court in New Jersey, in a diversity suit brought to enforce money judgments issued by a New York state court, is independently obligated to recognize and enforce those judgments, either as a matter of comity or by reason of the Full Faith and Credit Clause, where there has been full and fair litigation in the New York state court as to that court's jurisdiction over the parties and the subject matter of the suit leading to the entry of judgments in question.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Art. IV, Sec. 1: Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

United States Code, Title 28, § 1738: Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

STATEMENT OF THE CASE

This case is intimately related to the prolonged and complex marital controversy between the petitioner wife and the respondent husband, a controversy that has deeply involved the judiciary of both New York and New Jersey. The scope of that controversy and the full faith and credit implications thereof are set forth at some length in the companion petition for certiorari filed this day by the petitioner herein, seeking review of certain contempt orders issued by the New Jersey court, and need not be repeated here. *Joffe v. Joffe*, 50 N.J. 265, 234 A.2d 232.

Suffice it to say that the instant federal court controversy commenced on February 5, 1964, when the wife filed a complaint in the District Court for the District of New Jersey. That complaint, grounded on diversity of citizenship and alleging that more than $10,000 was in controversy, sought judgment against the husband in the amount of $18,856.

The claim was grounded on two judgments that had been duly entered by the New York Supreme Court for alimony and support arrearages owed by the husband under decrees previously entered by that court. The first judgment, entered on Sept. 25, 1963, was in the amount of $10,660; the second judgment, filed on Dec. 2, 1963, was in the amount of $8,196. These two judgments, of course, were among those that were later to be denied full faith and credit by the New Jersey courts; and they were among those that the New Jersey Superior Court ordered her to vacate in its contempt ruling.

On February 26, 1964, the petitioner wife filed an amended complaint. This complaint not only repeated the demand for the $18,856 due under the New York judgments but also prayed for a judgment that the New York decrees in question must be given full faith and credit. Simultaneously with the filing of this amended complaint, the wife filed a motion in the District Court seeking to restrain the husband from proceeding further in the New Jersey courts on the ground that the New York orders and judgments were entitled to full faith and credit.

This motion to restrain the husband from proceeding further in New Jersey was amended in several respects from time to time as the New Jersey proceedings continued to go forward. The petitioner wife also sought leave to file a further amended complaint for a declaratory judgment as to the validity of the New York decrees. And she further moved for summary judgment to recover the $18,856 sought in the original complaint.

Following a hearing on these motions of the wife and counter-motions of the husband, the District Judge in open court on November 16, 1966, denied all of the wife's motions and ordered dismissal of the complaint as amended on February 26, 1964. But as explained in a letter to the husband's counsel, see Appendix p. A-5, *infra,* the District Judge changed his mind about dismissing the complaint; upon reflection, he decided to adhere to the denial of all the mo-

tions filed by the wife but to stay all proceedings "until the litigation presently pending in the state courts between the same parties, involving the full faith and credit issue, is finally decided."

Accordingly, on November 29, 1966, the District Judge signed an order (1) denying all relief sought by the wife in her various motions, and (2) staying all further proceedings in the District Court "until there be a final determination by the courts of the State of New Jersey, in the litigation there pending between the parties to this action, on the question of whether or not the judgments obtained by plaintiff [wife] against defendant [husband] in the State of New York are entitled to full faith and credit in New Jersey." See Appendix hereto, p. A-5, *infra*.

On appeal, the Third Circuit stated that this action denying the motions and staying further proceedings in the federal court "was entirely proper." The Third Circuit further noted that subsequent to the District Court's action, the New Jersey Supreme Court had rendered its decision affirming "the Superior Court decision denying full faith and credit to the New York proceedings here involved." Several paragraphs were quoted by the Third Circuit from the opinion of the New Jersey Appellate Division as adopted by the New Jersey Supreme Court. See *Joffe v. Joffe*, 50 N.J. 265, 234 A.2d 232 (the subject of the petition for certiorari in the case companion hereto). The District Court's judgment was thus affirmed.

REASONS FOR GRANTING THE WRIT

The Third Circuit's approval of a stay of federal court proceedings pending a state court determination under the Full Faith and Credit Clause of the United States Constitution raises novel and significant questions deserving consideration by this Court.

This is a diversity action in a federal court in New Jersey to recover on two money judgments entered by a New York

state court. Basically at issue is the question whether, in such a case, the federal court has an independent obligation to decide the degree of faith and credit to be accorded those New York judgments in the federal court. Or should the federal court stay its hand until the New Jersey state courts have finally ruled upon whether they are obliged under the Full Faith and Credit Clause to give effect to those New York decrees?

It seems plain enough that the faith and credit to be accorded a foreign state court judgment in a federal court or in a state court is either a matter of federal comity or a federal question arising under the Constitution. It is a matter to be decided independently of any state law or state court decision. See Moore's Federal Practice, Vol. 1A, sec. 0.311[2], pp. 3412-3413 (1965). This Court implied as much in *First National Bank v. United Air Lines*, 342 U.S. 396 and in *Sutton v. Leib*, 342 U.S. 402. This case affords an opportunity for this Court to make express what has always been assumed to be true.

If that be the rule, the more general proposition recently enunciated in *Zwickler v. Koota*, 389 U.S. 241, 248, would come into operation:

> "... Congress imposed the duty upon all levels of the federal judiciary to give due respect to a suitor's choice of a federal forum for the hearing and decision of his federal constitutional claims. Plainly, escape from that duty is not permissible merely because state courts also have the solemn responsibility, equally with the federal courts, '... to guard, enforce, and protect every right granted or secured by the Constitution of the United States ...' *Robb v. Connolly*, 111 U.S. 624, 637. 'We yet like to believe that wherever the Federal courts sit, human rights under the Federal Constitution are always a proper subject for adjudication, and that we have not the right to decline the exercise of that jurisdiction simply because the rights asserted may be adjudicated in some other forum.' *Stapleton v. Mitchell*, 60

F. Supp. 51, 55; see *McNeese v. Board of Education*, 373 U.S. at 674, n. 6."

And while the Court in *Zwickler* was dealing with the enforcement of a First Amendment right in a federal court, there appears to be no conceptual or constitutional reason for treating differently a claim asserted in a federal court in terms of federal comity or in terms of the Full Faith and Credit Clause of Article IV of the Constitution.[1]

In abdicating their function to make an independent determination as to the full faith and credit claim, the federal courts below appear to have been misled by the diversity nature of this lawsuit.[2] Normally, the rule of decision as to most matters in issue would be governed by the local New Jersey law, pursuant to the doctrine of *Erie R. Co. v. Tompkins*, 304 U.S. 64. And the whole premise of the stay of federal court proceedings here was to await and presumably to be bound by the New Jersey court determination as to the validity of the New York decrees in New Jersey.

But it is constitutionally incongruous to say that the *Erie* rule was ever designed to compel federal courts to follow local rulings as to the impact of a federal constitutional provision when an identical federal question happens to arise in the context of a diversity case. The duty to give full faith and credit to the actions of the court of another state is not

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[1] See *Southard v. Southard*, 305 F.2d 730 (C.A. 2), holding that a federal court has jurisdiction under the Declaratory Judgments Act to adjudicate the validity of a Connecticut divorce decree on the allegation that Connecticut had failed to give constitutional full faith and credit to a prior Nevada divorce decree.

[2] Cf. *Liberty Mutual Ins. Co. v. Pennsylvania R. Co.*, 322 F.2d 963, 968 (C.A. 7), where the court ruled that a federal district court "is without authority to abdicate its admitted diversity jurisdiction by dismissing the action solely on the ground that other litigation is pending in a state court involving substantially the same parties and subject matter in order to obtain complete justice and avoid multiple litigation." See also *Kline v. Burke Const. Co.*, 260 U.S. 226.

an obligation confined to state courts; nor are the state courts the final arbiter under the Full Faith and Credit Clause. The duty falls as well upon federal courts, as Congress has recognized in 28 U.S.C. § 1738, whether viewed as a matter of comity or of constitutional compulsion. And this Court on occasion has indicated as much. See, e.g., *Davis v. Davis*, 305 U.S. 32 (federal courts in the District of Columbia held obliged to give full faith and credit to a Virginia decree).

Thus, the Third Circuit has here created a most confusing precedent. It has approved deferral of consideration of the full faith and credit claim until the New Jersey courts have finally ruled on that federal issue, thus implying that the New Jersey ruling might become binding on the federal court.[3] Such a ruling places the petitioner in an impossible position. If the New Jersey ruling is incorrect and if this Court were to decline to review and reverse that ruling, the petitioner would be saddled with an incorrect application of the Full Faith and Credit Clause without any opportunity to secure an independent federal court determination of her federal claim. On the other hand, if the New Jersey ruling were eventually to be ignored by the federal district court, or even if it be corrected on review by this Court, the petitioner in the meantime has been denied the right to a prompt exercise of the federal court's independent obligation to adjudicate her federal claim with respect to money judgments affecting the support due her and her minor child.

The obvious importance of the ruling below, in terms both of the duty of federal courts to respect the rulings of state courts and of the day-to-day execution of federal diversity jurisdiction, bespeaks the need for review by this Court.

---

[3]The New Jersey ruling, of course, is subject to review by this Court, as requested in the companion petition for certiorari.

CONCLUSION

For these reasons, the judgment below should be reviewed on writ of certiorari.

Respectfully submitted,

EUGENE GRESSMAN
1730 K Street, N. W.
Washington, D. C. 20006
Counsel for Petitioner

March 1, 1968

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Gussie JOFFE, Appellant,

v.

Sidney H. JOFFE.

Nos. 16264, 16412.

Argued Sept. 29, 1967.

Decided Oct. 27, 1967.

Gussie Kleinman (Joffe), pro se.

J. Mortimer Rubenstein, Rubenstein & Albert, Paterson, N. J., for appellee.

Before McLAUGHLIN, HASTIE and FORMAN, Circuit Judges.

OPINION OF THE COURT

PER CURIAM.

In this branch of a bitter domestic litigation, plaintiff-appellant seeks to recover on two money judgments obtained by her in the New York State courts. By motion, later amended, she asked that defendant-appellee be enjoined from further proceeding against her in his then pending action in the New Jersey courts until after determination by the district court of the said New York judgments issue. As the district court found, the New Jersey litigation involved, inter alia, the problem of whether the New York judgments should be accorded full faith and credit in New Jersey. At the time the court acted on the motion it further appeared that the New Jersey Supreme Court had accepted the New

Jersey Superior Court decision for consideration and that said Court might decide whether appellant's New York proceedings and judgments in her favor were entitled to acceptance by New Jersey.

The district court denied plaintiff's motion as amended and ordered all proceedings in that suit stayed until after final determination by the courts of the State of New Jersey in the above mentioned litigation, of the question whether the judgments obtained by appellant against appellee in the state of New York are entitled to full faith and credit in New Jersey.

On the plain situation before us, we are satisfied that the district court order denying plaintiff-appellant's amended motion and ordering all proceedings in the district court action stayed as stated was entirely proper. It should be noted that the New Jersey Supreme Court by its per curiam decision of October 9, 1967, 234 A.2d 232, in the State court appeal referred to has now affirmed the Superior Court decision denying full faith and credit to the New York proceedings here involved. That Court quoted with approval the opinion of the New Jersey Superior Court, Appellate Division in said case which held as follows:

> "There is nothing in the record to establish that at the time the Chancery Division action was commenced the New York court had personal jurisdiction over the plaintiff or the marital *res*. It is further apparent that all New York judgments were obtained by defendant in violation of the Chancery Division restraining orders.
>
> "By proceeding in the New York court after having been served with the restraining orders of our court, defendant was guilty of contempt. The judgment of the Chancery Division adjudging defendant in contempt of court is affirmed."

The New Jersey Supreme Court in its said per curiam opinion ruled as follows:

"The judgment is affirmed for the reasons expressed in the opinion of the Appellate Division, supra."

The judgment of the District Court will be affirmed with costs to be taxed against plaintiff-appellant.

JUDGMENT
OF THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
(Dated October 27, 1967)

[Caption Omitted]

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the orders of the District Court, filed October 28, 1966 and November 29, 1966, be, and the same are hereby affirmed, with costs taxed against plaintiff-appellant.

ATTEST:

Clerk

ORDER
OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY
(Dated November 29, 1966)

[Caption omitted]

This matter coming on to be heard on November 14, 1966, the return day of plaintiff's motion filed herein on October 25, 1966, and plaintiff's amended motion filed herein on November 1, 1966, in the presence of plaintiff, appearing pro se, and J. Mortimer Rubenstein, appearing for defendant; and the Court after having read the briefs and affidavits filed on behalf of the parties, and after having heard and considered the arguments of counsel, being of opinion that plaintiff is not entitled to any of the relief sought by her motion and amended motion whereby she seeks, inter alia, to enjoin defendant from further proceeding against her in any of the courts of the State of New Jersey with respect to any matter involving the marital rights and obligations of the parties, pending a determination by this Court as to whether full faith and credit should be accorded in New Jersey to certain judgments obtained in the State of New York by plaintiff against defendant, which litigation in New York also involved the marital rights and obligations of the parties to this action; and it appearing from the record herein that the litigation presently pending in the Superior Court of the State of New Jersey was commenced by defendant herein prior to the institution of the action in this Court by plaintiff and involved the issue of full faith and credit; and it further appearing as a result of the certification granted by the Supreme Court of New Jersey on May 31, 1966 (47 N.J. 420), that said Court may decide the question of whether or not the New York proceedings and judgments based thereon are entitled to full faith and credit in New Jersey, and that until such determination is made this Court should stay all further proceedings in the action here pending; it is, on this 29th day of November, 1966,

ORDERED, that the relief sought by plaintiff in her motion filed herein on October 25, 1966 and November 1, 1966, respectively, be, and the same hereby is, in all respects denied; and it is further

ORDERED, that until there be a final determination by the courts of the State of New Jersey, in the litigation there pending between the parties to this action, on the question of whether or not the judgments obtained by plaintiff against defendant in the State of New York are entitled to full faith and credit in New Jersey, all further proceedings in this action in this Court be stayed.

Anthony T. Augelli
United States District Judge

† † †

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Newark, N. J. 07101

Chambers of
ANTHONY T. AUGELLI
Judge

November 29, 1966

J. Mortimer Rubenstein, Esquire
Rubenstein & Albert, Esquires
45 Church Street
Paterson, New Jersey 07505

Re: Joffe v. Joffe
Civil Action No. 105-64

Dear Mr. Rubenstein:

This will acknowledge receipt of your letter of November 16, 1966, with which you enclosed form of proposed order to be entered in this case following the disposition made by me of plaintiff's motion and amended motion on November 14.

I adhere to the denial of all relief sought by plaintiff in her motions, but do not feel that I should, at this time, dismiss plaintiff's complaint and amended complaint for failure to state a claim upon which relief may be granted. Upon reflection, and in fairness to Mrs. Joffe, I think that all proceedings in the case in this Court should be stayed until the litigation presently pending in the state courts between the same parties, involving the full faith and credit issue, is finally decided.

I have changed the form of order submitted to conform to my present thinking and enclose a copy for your files. The original order has this day been filed with the Clerk of the Court. A copy of this letter, as well as a copy of the order, has been sent to Mrs. Joffe.

Yours very truly,

Anthony T. Augelli

ATA:fho

c.c. Mrs. Gussie Joffe;
Clerk of the Court.